



**USAID**  
FROM THE AMERICAN PEOPLE

## Changes to Law Memo FY 2016

### A Mandatory Reference for ADS Chapter 200

Full Revision Date: 06/06/2016  
Responsible Office: GC  
File Name: 200sbt\_060616



January 15, 2016

**MEMORANDUM**

To: AA/M  
AA/LPA  
AA/PPL

From: AGC/LP, Don Gressett //s//

Subject: Changes Made by the FY 2016 Department of State, Foreign Operations, and Related Programs Appropriations Act to Current Law

On December 18, 2015, the President signed into law H.R. 2029, the Consolidated Appropriations Act, 2016 (P.L. 114-113). Division K is the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (“the Act” or “SFOAA”). Similar to prior years, the appropriations for the Department of State operations are provided in Title I, USAID’s operating accounts are under Title II and program accounts under Title III. Additional operating and program appropriations are provided under Title VIII for Overseas Contingency Operations/Global War on Terrorism.

The titles are arranged as follows (see also attached table of contents):

Title I	Department of State and Related Agency
Title II	U.S. Agency for International Development
Title III	Bilateral Economic Assistance
Title IV	International Security Assistance
Title V	Multilateral Assistance
Title VI	Export and Investment Assistance
Title VII	General Provisions
Title VIII	Overseas Contingency Operations/ Global War on Terrorism
Title IX	Other Matters (International Monetary Fund)

The purpose of this memorandum is to identify and briefly describe significant changes made by the FY 2016 Act to legal requirements and authorities previously applicable to USAID. When relevant, an analysis of the accompanying report language relating to the change may also be included. While the changes to law are generally arranged in groupings by relevant bureaus, some listings have much broader implications. This memorandum is not intended as a substitute for a further, more detailed review of the statute by relevant offices, bureaus, or missions – *especially with regard to country-specific matters*. Those changes marked with an asterisk (\*)

will likely require the modification or issuance of Agency-wide guidance. For the most part, the changes identified do not include earmarks and funding ceilings. References throughout the Act to “the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act)” is a reference to the accompanying Statement of Managers (SOM).

1. Congressional Notifications.\* As in prior Acts, the Appropriations Committees use the phrase “subject to the regular notification procedures of the Committees on Appropriations” to denote those programs which require special notification. This means that inclusion of a project or activity in the FY 2016 Congressional Budget Justification document is not sufficient to satisfy prior notification requirements for those countries, programs, or activities, as the case may be, which the FY 2016 Act (and its accompanying SOM) specifically makes “subject to the regular notification procedures of the Committees on Appropriations.” Separate notifications will therefore need to be submitted to Congress to satisfy this additional notification requirement. Special notification requirements contained in the FY 2016 Act and the SOM include:
  - a. prior to obligating any funds appropriated in the Capital Investment Fund (CIF) (CIF, unchanged from FY 2015);
  - b. at least 5 days in advance of obligating any funds appropriated in the Complex Crises Fund (Complex Crises Fund, unchanged from FY 2015);
  - c. prior to obligating Development Credit Authority (DCA) funds for the cost of modifying any guaranteed loans under the Act or prior Acts (DCA, unchanged from FY 2015);
  - d. prior to obligating funds appropriated by the Act or any prior Act for the acquisition of property or award of construction contracts for overseas diplomatic facilities during FY 2015 (Section 7004(d), unchanged from FY 2015);
  - e. prior to the opening, closure, or any significant modification to an interim or temporary diplomatic facility, except where there is a security risk to personnel (Section 7004(f)(2), changed from FY 2015);
  - f. prior to obligating or expending funds available pursuant to Titles III - VI of the Act when resuming terminated assistance to the government of any country whose duly elected head of government is deposed by military coup d’etat or decree, or after the date of enactment of the Act, a coup d’etat or decree in which the military plays a decisive role, or when providing assistance for the sanctioned government under the carve out for assistance to promote democratic elections or public participation in democratic processes. (Section 7008, unchanged from FY 2015);
  - g. prior to entering into any agreement with any department, agency, or instrumentality of the United States Government pursuant to section 632(b) of the Foreign Assistance Act of 1961, as amended (FAA) valued in excess of

\$1,000,000 and any agreement made pursuant to FAA section 632(a), with Global Health Programs (GHP), Development Assistance (DA), and Economic Support Fund (ESF) funds appropriated by the Act and prior Acts. This requirement does not apply to transfers between USAID and the Department of State (Section 7009(c)(3), unchanged from FY 2015);

- h. prior to obligating funds made available under Titles II - V of the Act under an appropriation account to which they were not appropriated (Section 7009(d), unchanged from FY 2015);
- i. prior to reprogramming funds appropriated under Titles III - VI of the Act which are specifically designated for other programs within the same account, notwithstanding the designation if compliance with the designation is made impossible by operation of any provision of this or any other Act (Section 7014(a), changed from FY 2015);
- j. unless previously justified, the use of OE to (1) create new programs; (2) eliminate a program, project, or activity; (3) close, suspend, open, or reopen a mission or post; (4) create, close, reorganize, or rename bureaus, centers, or offices; or (5) contract out or privatize any functions or activities presently performed by Federal employees. (Section 7015(a), changed from FY 2015);
- k. prior to reprogramming funds provided under Titles I and II of the Act or any prior Act in excess of \$1,000,000 or 10 percent, whichever is less, that (1) augments or changes existing programs, projects, or activities; (2) relocates an existing office or employees; (3) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (4) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress (Section 7015(b), changed from FY 2015);
- l. prior to obligating funds transferred to USAID by the Department of Defense or for programs authorized by section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (P.L. 109-163) (Section 7015(d), unchanged from FY 2015);
- m. prior to obligating and expending funds appropriated under Titles III-VI for Afghanistan, Bahrain, Bolivia, Burma, Cambodia, Colombia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Iran, Iraq, Lebanon, Libya, Mexico, Pakistan, the Russian Federation, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Uzbekistan, Venezuela, Yemen, and Zimbabwe (Section 7015(f), changed from FY 2015);

- n. prior to reprogramming funds that were withheld from obligation or otherwise not programmed as a result of application of a provision of law in this or any other Act (Section 7015(g), new requirement);
- o. prior to exercising the authority to extend the availability of funds appropriated under titles I and III - V of this Act which have been returned or not made available for organizations and programs because of the implementation of section 307(a) of the FAA or section 7048(a) of this Act (Section 7017, unchanged from FY 2015);
- p. prior to deviating in excess of 5 percent from the amounts specifically designated tables in the SOM, and subject to the additional requirements for such deviations (Section 7019, changed from FY 2015);
- q. prior to obligating funds for any cash transfer or nonproject sector assistance using DA or ESF, as well as prior to waiving the separate account requirement for nonproject sector assistance (Section 7026(b)(3)-(4), unchanged from FY 2015);
- r. prior to obligating funds under Section 7027(a) to nongovernmental organizations (NGOs) for assistance to countries that would otherwise be prohibited from receiving assistance (unchanged from FY 2015);
- s. prior to using interest earned on local currency accrued to a NGO as a result of economic assistance provided under Title III of the Act and placed in an interest bearing account (Section 7030, unchanged from FY 2015);
- t. prior to obligating funds for direct Government-to-Government assistance in excess of \$10,000,000, and all funds available for cash transfer, budget support, and cash payments to individuals. Note: CN requirement can be met through the CBJ if the prior consultation requirement is also met. The special CN requirement noted above for any cash transfer or nonproject sector assistance pursuant to section 7026(b) may be applicable. (Section 7031(a)(2), unchanged from FY 2015);
- u. prior to using ESF or AEECA funds appropriated by this Act or prior Acts for contributions to establish or maintain genocide memorial sites (Section 7034(d), new requirement);
- v. prior to exercising the authority in section 525(b)(5) of the FY 2005 Act by the USAID AA/GH with respect to non-HIV/AIDS pharmaceuticals and other products. Section 525(b)(5) of the FY 2005 Act states that at the close of each fiscal year, the United States Global AIDS Coordinator may transfer out of the HIV/AIDS Working Capital Fund to other HIV/AIDS programmatic areas such amounts as the Coordinator determines to be in excess of the needs of the HIV/AIDS Fund. (Section 7034(n), unchanged from FY 2015);

- w. prior to obligating ESF to establish and operate one or more enterprise funds for Egypt or Tunisia or to use ESF or AEECA funds for the costs of loan guarantees for Ukraine, Tunisia, and Jordan (Section 7034(o), changed from FY 2015);
- x. prior to obligating funds available in the Act for West Bank and Gaza (Section 7039(f), unchanged from FY 2015);
- y. prior to obligating funds appropriated under Title III in the Act and prior Acts for non-lethal assistance for programs to address the needs of civilians affected by conflict in Syria (Section 7041(h)(5), unchanged from FY 2015);
- z. prior to obligating funds for the Power Africa Initiative (Section 7042(g), new requirement);
- aa. prior to obligating funds for programs in South and Central Asia to expand linkages between Afghanistan and countries in the region (Section 7044(a)(D)(iii), new requirement);
- bb. prior to obligating funds made available for counternarcotics programs and law enforcement activities in Colombia (SOM under Section 7045 General Provision discussion, new requirement);
- cc. prior to obligating funds for the Central America Regional Security Initiative to support international commissions against impunity in Honduras and El Salvador, and subject to prior consultation with the Committees on Appropriations (Section 7045(a)(5)(A), new requirement);
- dd. prior to obligating funds for assistance to Colombia to support the implementation of the peace agreement, and subject to prior consultation with the Committees on Appropriations (Section 7045(b)(3), new requirement);
- ee. prior to obligating funds under the section heading “War Crimes Tribunals Drawdown” (Section 7047, unchanged from FY 2015);
- ff. prior to obligating funds for certain community-based police assistance under Section 7049 (unchanged from FY 2015);
- gg. prior to obligating reprogrammed funds withheld as a result of unpaid parking fines and penalties and unpaid property taxes in the United States owed by foreign countries (Section 7053, unchanged from FY 2015);
- hh. prior to using specified funds for the cost (including support costs) of individuals detailed to or employed by USAID whose primary responsibility is to carry out programs in response to man-made disasters (Section 7057(f), unchanged from FY 2015);

- ii. prior to using funds made available under Title III in the Act to combat an international infectious disease outbreak that is sustained, severe, and is spreading internationally, or that is in the national interest to respond to as a Public Health Emergency of International Concern (Section 7058(c), changed from FY 2015);
- jj. prior to exercising the authority to obligate any previously unobligated balances of funds specifically designated for assistance for basic education in prior Acts, which the USAID Administrator determined was in excess of the absorptive capacity of the recipient countries, for other sectors, and also subject to prior consultation with the Committees on Appropriations (Section 7060(a)(1)(B), new requirement);
- kk. prior to obligating funds appropriated by title III of this Act for higher education programs (Section 7060(a)(2), new requirement);
- ll. prior to obligating funds appropriated under the headings “Economic Support Fund” and “Development Assistance” for people-to-people reconciliation programs, and also subject to prior consultation with the Committees on Appropriations (Section 7060(g), new requirement);
- mm. prior to using funds appropriated by the Act to make a future year funding pledge for any multilateral or bilateral program funded in Titles III - VI of the Act (Section 7065, unchanged from FY 2015);
- nn. prior to obligating funds appropriated by the Act for the United Nations Population Fund (UNFPA) pursuant to the requirements in section 7082(b) of the Act (unchanged from FY 2015);
- oo. prior to transferring funds under Title III of the Act to the Overseas Private Investment Corporation (OPIC) Program Account (Section 7061(a), unchanged from FY 2015);
- pp. prior to obligating funds for programs described for programs to Counter Foreign Fighters and Violent Extremist Organizations, and such notification must indicate the specific goals and objectives to be supported through the proposed obligation of funds (Section 7073(c)(3), new requirement);
- qq. prior to obligating funds made available under Titles III -VI of the Act for Enterprise Funds (Section 7074(a), unchanged from FY 2015);
- rr. prior to changing levels of funding in operating plans that are specified by the Act or the SOM (Section 7076(a), unchanged from FY 2015);
- ss. must submit plan prior to the distribution of any assets resulting from the liquidation, dissolution, or winding up of an Enterprise Fund (Section 7074(b), changed from FY 2015);

- tt. must submit plan prior to submission of a transition or operating plan of any private equity fund or other parallel investment fund under an existing Enterprise Fund (Section 7074(c), changed from FY 2015);
- uu. within 5 days of a Presidential determination made on constitutional grounds that a provision of law noted in the Act shall not apply (Section 7075, unchanged from FY 2015);
- vv. prior to allocating to a “selected” mission the full estimated cost of multi-year program pursuant to the USAID Small Grants Program (Section 7034(q), incorporating FY 2015 section 7080(e)(2)), unchanged from FY 2015);
- ww. prior to a procurement action that involves awarding of a sole source contract in excess of \$15,000,000; awarding a non-competitive grant or contract (other than sole source) in an amount greater than \$75,000,000; raising the ceiling on an existing IQC by an amount greater than \$35,000,000; issuing a new IQC in excess of \$75,000,000; awarding an umbrella grant in excess of \$25,000,000; or raising the ceiling on an existing umbrella grant in excess of \$25,000,000. CN not required for assistance in CPCs and for humanitarian response or post-conflict situations. (House Report 114-154, OE Account Heading, unchanged from FY 2015);
- xx. prior to the transfer of OCO funds pursuant to section 8003 (unchanged from 2015).

## **MANAGEMENT OPERATIONS ISSUES**

- 2. **Indirect Costs.** Section 7034(p) of the Act requires, within 90 days of enactment, an assessment of current policies and practices to ensure proper setting of indirect cost rates.
- 3. **Notifications.\*** The Act modifies longstanding provisions in sections 7015(a) and (b) relating to notification requirements of the Operating Expenses (OE) and Capital Investment Fund (CIF) accounts. Subsection (a) now requires a special notification for any listed activity unless previously justified in the CBJ. Previously, some of the listed items triggered a notification only if the obligation of funds was the result of a reprogramming of funds. With regard to the modifications, the SOM notes that the requirement to notify the use of funds to “create, close, reorganize, or rename bureaus, centers, or offices” applies to such operating units both domestically and overseas. The SOM also states paragraph (5), relating to the contracting out or privatization of functions or activities presently performed by Federal employees, is not intended to require a notification for duties performed by personal services contractors.
- 4. **Partner Vetting.** Section 7034(e) provides for continued implementation of the Partner Vetting Program (PVS) pilot program. Within 30 days of completion of the pilot,



USAID and the Department of State must inform the Committees on Appropriations of the criteria to be used to evaluate the pilot. Within 180 days after completion of the pilot, a report is due on the evaluation of the pilot. Additionally, the Committees on Appropriations and Agency implementing partners must be consulted at least 30 days prior to implementing any recommendation to expand the pilot. The SOM adds that the “Department of State and USAID are directed to include a direct vetting option that does not require prime awardees to collect, verify, or submit sub-awardee data. The Department of State and USAID should ensure that all individuals vetted through such pilot are able to obtain information on how data is used by the United States Government”. The SOM also states “[p]rior to the completion of the evaluation and consultation with the Committees on Appropriations, USAID and the Department of State are directed to refrain from implementing similar vetting systems in countries outside the designated PVS pilot program unless required to respond to existing security threats. The Committees on Appropriations shall be consulted prior to beginning new vetting programs or implementing changes to the existing vetting programs.”

5. Records Management.<sup>\*</sup> Section 7077(c) is a new subsection that prohibits funding for use or establishment of email accounts or email servers created outside the .gov domain or not fitted for automated records management as part of a Federal government records management program. The SOM notes the requirement is not intended to prohibit the funding of Department of State or USAID cloud server capabilities. The new subsection also requires the Administrator to take certain steps relating to the protection, preservation, and retrieval of Federal records. The subsection also mandates a report on USAID records management, which is to be assessed by the GAO.

## **EUROPE AND EURASIA.**

6. Assistance for Europe, Eurasia and Central Asia (AEECA) Account.<sup>\*</sup> The Act reinstates the AEECA account, and also requires a transfer of International Narcotics Control and Law Enforcement (INCLE) into the AEECA account. Similar to prior years, the Act also provides that funding in the region from the Global Health Programs (GHP) account and the Economic Support Fund (ESF) account programmed in the region shall be under the responsibility of the coordinator established pursuant to the Support for Eastern European Democracy Act and the FREEDOM Support Act. The account contains broad notwithstanding authority, and is referenced in the Act in a similar fashion prior to it being disbanded in FY 2013.
7. Russia. Section 7070(a) continues the restriction that none of the funds appropriated by this Act may be made available for assistance to the central government of the Russian Federation.

Section 7070(b)(2) is revised to restrict assistance for (1) the implementation of any action or policy that recognizes the sovereignty of the Russian Federation over Crimea; (2) certain facilitation, financing, or guarantee of United States Government investments in Crimea; and (3) assistance for Crimea, if such assistance includes the participation of

Russian Government officials, and Russian owned and controlled banks, and other Russian Government owned and controlled financial entities. The restrictions may be lifted if the Secretary of State certifies that Ukraine has reestablished sovereignty over Crimea. (The underlined language is modified from last year.)

## **AFRICA**

8. Ethiopia. Section 7042(d) provides that funds for assistance for Ethiopia may not be used for “any activity that supports forced evictions”. In FY 2015 the restriction was limited geographically and prohibited use of funds “to support activities that directly or indirectly involve forced evictions.”

## **OAPA**

9. Afghanistan. Section 7044(a), while similar, is revised from prior years. It prohibits funding for any project or activity that (1) includes the participation of any Afghan individual or organization that the Secretary of State determines to be involved in corrupt practices or a violation of human rights; (2) cannot be sustained, as appropriate, by the Government of Afghanistan or another Afghan entity; (3) is inaccessible for the purposes of conducting regular oversight; or (4) initiates any new, major infrastructure development. (New/modified language underlined).

The Act also contains an expanded pre-obligation certification requirement for assistance for the central Government of Afghanistan. For instance, the new certification requires that goals and benchmarks be set by the Governments of the United States and Afghanistan and that monitoring and oversight frameworks are in place. As in prior years, the requirement contains a national security interest waiver if the certification cannot be made. The Act also requires a new reporting requirement on the goals and benchmarks (as required by the certification) within 90 days, with an update each 6 months thereafter on the progress made towards meeting such goals and benchmarks.

The Act does not retain the 5 to 1 withholding of assistance for each dollar imposed as taxes, duties, penalties, or other fees on the transport of property of the U.S. Government entering or leaving Afghanistan.

10. Pakistan. Section 7044(d)(6) adds a new requirement that Secretary of State take “all practicable steps” to ensure that mechanisms are in place for monitoring, oversight, and control of funds made available for assistance for Pakistan.
11. Sri Lanka. Section 7044(e) contains a modified pre-obligation requirement for assistance for the central Government of Sri Lanka. In prior fiscal years, the certification was limited to Foreign Military Financing (FMF) assistance, but is now applicable to all assistance for the central government. The certification, which contains no waiver,

requires that the Government of Sri Lanka is continuing to address the underlying causes of conflict in Sri Lanka and increase accountability and transparency in governance.

## **ASIA**

12. Asia Rebalancing Initiative. The FY 2015 language regarding the Initiative is carried into FY 2016 (except for certain reporting requirements). However, the definition of “Asia Region” in section 7043(a)(8) of the FY 2015 Act is modified by adding “East Asia”.
13. Burma. The notwithstanding authority for ESF-funded assistance for Burma in section 7043(b) is modified by now making it subject to prior consultation with the Committees on Appropriations. The subsection also includes a new provision that funds may not be made available to any organization or individual the Secretary of State determines and reports advocates violence against ethnic or religious groups and individuals. The Act also mandates a GAO assessment of the democracy programs in Burma conducted by USAID and the Department of State, and that the Chief of Mission in Burma, in consultation with AA/DCHA and AS/DRL, shall be responsible for democracy programs in Burma.
14. Cambodia. Section 7043(c) provides a contribution authority of up to \$2 million for the Extraordinary Chambers in the Court of Cambodia (ECCC), though limited to the appeals process in Case 002/01. The Act does not continue the requirement that decisions on the uses of funding for democracy programs be the responsibility of the Chief of Mission for Cambodia.

## **MIDDLE EAST**

15. Egypt. Section 7041(a) is substantially revised from prior fiscal years. Subsection (a) provides for notwithstanding authority for assistance for Egypt. However, no assistance may be made available for assistance for the Government of Egypt unless the Secretary of State certifies that such government is (1) sustaining the strategic relationship with the United States and (2) meeting its obligation under the 1979 Egypt-Israel Peace Treaty. Restrictions on the use of ESF for budget support remain similar to last fiscal year. The section also provides for a 15 percent withholding of FMF, with a waiver, until the Secretary makes a certification related to the conduct of the Government of Egypt.
16. Libya. Section 7041(b)(3) is modified from current years to require a Secretary of State certification and report that all practicable steps have been taken to ensure that mechanisms are in place for monitoring, oversight, and control of funds for assistance for Libya.
17. Middle East Enterprise Funds. Section 7034(o)(2) continues the authority to use ESF to establish and operate one or more enterprise funds for Egypt and Tunisia. Conditions from the FY 2012 Act are incorporated by reference and the authority of any such

enterprise fund or funds to provide assistance will cease to be effective on December 31, 2026. The provision is also modified from FY 2015 to authorize the use of the notwithstanding authority contained in the FY 2012 Act Enterprise Fund authority.

18. Israel. Section 7034(k)(10) provides for an extension of loan guarantees for Israel through FY 2019.
19. Jordan. Section 7041(d) provides an additional \$100 million for assistance for Jordan for water sector support. The SOM notes that the additional funding is intended for the Red Sea-Dead Sea project.
20. Syria. Section 7041(h)(1) continues the broad notwithstanding authority for funds appropriated under Title III in the Act and prior Acts for non-lethal assistance, though adds “assist vulnerable populations in Syria and neighboring countries” to the list of contemplated activities. The section also requires that funds be made available for a program to strengthen Syrian civil society in a manner that supports the sustainability of such organizations. The SOM notes that this requirement is “intended to empower such organizations by establishing a more direct relationship with the Department of State and USAID.”

#### **DEMOCRACY, CONFLICT, AND HUMANITARIAN ASSISTANCE**

21. Democracy Programs.\* Sec 7032 is substantially revised from prior fiscal years, though retains the broad notwithstanding authority for democracy programs. The revised section requires in subsection (d) that programs to strengthen government institutions “be prioritized” for those countries that demonstrate a commitment to democracy and the rule of law. Subsection (f) requires the development of guidelines, within 90 days of enactment, to clarify program design and objectives for democracy programs, including the use of contracts versus grants and cooperative agreements for the unique objectives of democracy programs. The SOM adds that for the purposes of such guidelines, funds appropriated for democracy programs include: Development Assistance; Transition Initiatives; Complex Crises Fund; Economic Support Fund; Democracy Fund; Assistance for Europe, Eurasia and Central Asia; and International Narcotics Control and Law Enforcement. NED and its core institutes are to be excluded. The subsection also states that USAID should continue to recognize the unique benefits of assistance instruments in implementing civil society and political competition and consensus building programs, and also requires a report by September 30, 2017, on the use of contracts versus assistance instruments in democracy programs.

A new subsection (g) requires, prior to obligation of funds for assistance for a nondemocratic or democratic transitioning country that has had new democracy strategy since the date of enactment of the Act, a review of such strategy. A report is also required on implementation of this new subsection.

A revised subsection (h) requires the Deputy Secretary for Management to make certain consultations within USAID and the Department of State regarding funding for democracy programs prior to submission of the section 653(a) report. The subsection also requires a report if a democracy program is closed or significantly modified as a result of the increasingly repressive nature of the host country government.

## **LATIN AMERICA AND THE CARIBBEAN**

22. United States Engagement in Central America. Section 7045(a) is a new provision that provides up to \$750 million in conditioned funding to implement the United States Strategy for Engagement in Central America (the Strategy) in support of the Plan on the Alliance for Prosperity in the Northern Triangle of Central America (the Plan). The Act requires a spend plan for the Strategy prior to the obligation of funds to implement it. The Act also withholds a total of 75% of assistance (in tranches of 25% and 50%) for assistance for each of the central governments of El Salvador, Guatemala, and Honduras until the Secretary makes a certification relating to a total of 16 factors. There is no waiver to the certification requirement. After making the certifications for a country, the Secretary is to submit a report on progress being made on each of the 16 requirements, and directs the Secretary to suspend assistance (in whole or in part) for any item the Secretary determines that such government is failing to make sufficient progress. Assistance may be resumed if corrective measures have been taken. The SOM notes that the withholding and any suspension of funds should apply to each country individually, so that the failure of one country to meet the requirements does not adversely affect another. The Act also requires that if a change in national government occurs in any of the three countries, the Secretary must re-assess the new government's commitment to the 16 requirements. The Act further requires suspension of assistance if such commitment cannot be demonstrated.
23. Haiti. The certification requirement in section 7045(c) regarding assistance for the central government of Haiti is modified from prior fiscal years. The Secretary must now certify that the Government of Haiti is taking effective steps to:
- (1) hold free and fair parliamentary elections and seat a new Haitian Parliament;
  - (2) strengthen the rule of law in Haiti, including by selecting judges in a transparent manner; respect the independence of the judiciary; and improve governance by implementing reforms to increase transparency and accountability;
  - (3) combat corruption, including by implementing the anti-corruption law enacted in 2014 and prosecuting corrupt officials; and
  - (4) increase government revenues, including by implementing tax reforms, and increasing expenditures on public services.

(Significant changes from prior year underlined.)

The Act also caps ESF assistance for Haiti at \$191,413,000.

## **OTHER PROVISIONS**

24. Audit of Inter-Agency Transfers.\* Section 7009(e), which requires the IGs of agencies receiving funding pursuant to section 632(a) of the FAA to audit the transferred funds, has been modified to require USAID or State, as appropriate, to transmit a copy of such audits to the Committees on Appropriations. The Act also includes a new reporting requirement on Agency use of section 632(a) and section 632(b) agreements.
25. Countries Affected by Significant Populations of IDPs or Refugees. Section 7063 is a new General Provision directing funds appropriated under the Development Assistance (DA) and ESF accounts be made available for countries affected by significant populations of internally displaced persons or refugees.
26. Country Focus and Selectivity.\* Section 7081 is a new General Provision. Subsection (a) requires that any new bilateral assistance strategy include a transition plan identifying goals and options for winding down bilateral assistance. The SOM notes “bilateral and security assistance to certain countries serve abiding strategic purposes, and a transition plan for such a country should acknowledge this interest.”

Subsection (b) requires the Secretary to select at least one country with which to establish and implement a transition program to seek to reduce dependency on bilateral foreign assistance. The country selected must be a long-time recipient of assistance, have the capacity for self-sufficiency, and not be impacted by conflict or crisis. The Committees on Appropriations must be consulted prior to the selection of any country, and on the goals and targets for the selected country. The provision also provides that assistance may be resumed or continued for a selected country if the Secretary determines that to do so is important to the national interest.
27. Countering Foreign Fighters and Violent Extremist Organizations. Section 7073 is a new General Provision. Subsection (a)(1) requires funding be used to counter the flow of foreign fighters to countries in which violent extremists or violent extremist organizations operate. The SOM notes that for “the purposes of this section, the term ‘violent extremist organization’ means a foreign organization that, pursuant to United States law, is determined to be an organization that engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), including an organization that is designated by the Secretary of State as a foreign terrorist organization under section 219 of such Act.” Subsection (a)(2) requires funding to reduce public support for violent extremists or violent extremist organizations. Subsection (b)(1) requires funds be used to strengthen the state system and counter violent extremists and violent extremist organizations.

Subsection (c)(1) requires the Secretary to ensure coordination programs to counter violent extremism with other Federal agencies, and that such programs comply with all applicable laws and regulations. Subsection (c)(2) requires the Secretary, prior to obligation of funds for the purposes of the section, to put in place mechanisms for

appropriate monitoring, oversight, and control of such assistance. The paragraph also requires the Secretary to promptly inform Congress, with an explanation, of each significant instance in which such assistance has been compromised. Subsection (c)(3) makes assistance pursuant to subsection (a) subject to special notification, and also to the requirements enumerated in the SOM. The SOM requires that the Secretary submit the proposed funding levels for programs described under paragraphs (a)(1) and (2) concurrently with the section 653(a) report, and that CNs submitted pursuant to subsection (c)(3) indicate the specific goals and objectives to be supported through the proposed obligation of funds.

The SOM also requires the Secretary, in consultation with the heads of other relevant Federal agencies and within 90 days of enactment, to submit an assistance and cooperation strategy for programs to implement the objective described in subsection (a).

28. Congressional Budget Justification (CBJ). Section 7076(e) continues the requirement that the CBJs for State operations and foreign operations be submitted concurrent with the date of submission of the President's FY 2017 Budget Request. However, it adds a new requirement that the appendices for such justification be provided to the Committees on Appropriations within 10 days of the submission of the Budget Request.
29. Deviation from Allocation Tables.\* Section 7019 of the Act is substantially modified from prior fiscal years. Deviations from amounts in tables in the SOM in an amount less than 5 percent may take place without prior notification. However, to deviate by more than 5 percent, such deviation is subject to prior consultation and special notification, and can only take place to respond to significant, exigent, or unforeseen events, or to address other exceptional circumstances directly related to the national interest. Additionally, if a figure in a table in the SOM is relevant to the section 653(a) report, such number must be submitted as part the report. In explaining these revisions, the SOM states:

The agreement modifies language in section 7019 of the House and Senate bills. Amounts specifically designated in tables for funds appropriated in titles III through V in this explanatory statement that are applicable to the 653(a) report shall be included in such report. The revised section 7019 also provides that funds appropriated in the Act under titles III through V shall be made available to meet specifically designated amounts in such tables and may only be deviated from by 5 percent. Deviations from specifically designated amounts in excess of 5 percent are only authorized for specific circumstances enumerated in the Act and are subject to prior consultation and notification.

For specifically designated amounts in tables that are also included in the 653(a) report, any deviation from such specifically designated amounts are not authorized until submission of such report. For example, a specifically designated amount of \$4,500,000 in the Economic Support Fund table in this explanatory statement for assistance for a country must be contained in the 653(a) report. However, after submission of such report, a deviation of up to 5 percent from \$4,500,000 is authorized. A deviation in excess of 5 percent may

only take place to respond to specific circumstances enumerated in the Act and is subject to prior consultation and notification. For a specifically designated amount, such as \$7,000,000 for a program in the Development Assistance table, which would not be reflected in the 653(a) report, deviations authorized by subsection (b) may take place prior to submission of such report. Nothing in the revised section 7019 may be construed to authorize a deviation from a designated funding level in the Act containing a “shall.”

30. Genocide Victims Memorial Sites. The Act, in section 7034(d)(2) authorizes endowments using ESF and AECCA funds to establish and maintain memorial sites of genocide. The use of funds for such purposes is subject to special notification.
31. International Religious Freedom. The Act contains a new section 7033 relating to international religious freedom. The new provision requires the use of ESF on programs to protect vulnerable and persecuted religious minorities, as well as the use of International Disaster Assistance (IDA) and Migration and Refugee Assistance (MRA) for humanitarian assistance for vulnerable and persecuted religious minorities. The provision also requires an assessment by the Secretary of State on the persecution of religious minorities in the Middle East and Burma, including whether such persecution constitutes mass atrocities or genocide.
32. Loan Guarantees. Section 7034(o)(1) authorizes the use of ESF and AECCA for the costs of loan guarantees for Ukraine, Tunisia, and Jordan. Unlike prior year authorities for such loan guarantees, the use of funds for loan guarantees is no longer limited to base funding.
33. Operating and Spend Plans.\* Section 7076(a) requiring operating plans for funding in title II is largely unchanged. The Act clarifies that such plan must include both base and any OCO funding.

Prior to the initial obligation of funds, section 7076(b) requires the Secretary of State to submit a detailed spend plan for:

- (1) Afghanistan, Lebanon, Pakistan, and the West Bank and Gaza;
- (2) the Power Africa Initiative and the regional security initiatives listed in the SOM (the Caribbean Basin Security Initiative; the Central America Regional Security Initiative; the Trans-Sahara Counterterrorism Partnership; the Partnership for Regional East Africa Counterterrorism; the West Africa Regional Security Initiative; the Global Peace Operations Initiative, including Africa Contingency Operations Training and Assistance; the African Peacekeeping Rapid Response Partnership; the Africa Conflict Stabilization and Border Security program; the African Military Education Program; the Africa Maritime Security Initiative; the Security Governance Initiative; the Africa Regional Counter-Terrorism Fund; the Counterterrorism Partnerships Fund; the Regional Security



Initiative; the Africa Capacity for Immediate Response to Crisis; and the Southeast Asia Maritime Security Law Enforcement Initiative); and

(3) democracy programs and certain sectors enumerated in Section 7060 of the Act (basic and higher education, environment programs, food security and agricultural development, microenterprise and microfinance, programs to combat trafficking in persons and modern slavery, and water and sanitation).

34. Prize Authority.\* Section 7034(d)(4) provides USAID limited authority to award prizes, described as “innovation incentive awards” as part of its development activities. The agency is limited to 10 such awards with FY 2016 funds, and the amount of such awards is capped at \$100,000 each.
35. Sector Allocations.\* The bill maintains in section 7060, the consolidated section of funding directives, related reporting requirements, and limitations for program funding in sectors including education, environment, and food security and agriculture development. Sectors included in a SOM allocation table are subject to the revised deviation parameters and requirements contained in section 7019.
- Basic and Higher Education.
    - Section 7060(a)(1) of the Act retains the \$800 million soft earmark for basic education, and states that such funds should only be used to implement the stated objectives of basic education for Country Development Cooperation Strategies or similar strategies regarding basic education. The Act also authorizes the reprogramming of prior year funds earmarked for basic education for use in other sectors if the Administrator determines that such funds “are in excess of the absorptive capacity of recipient countries.” This new authority is subject to prior consultation with the Committees on Appropriations and special notification.
    - Section 7060(a)(2) is modified and now provides that funds made available for higher education programs may be made available notwithstanding any other provision of law that restricts assistance to foreign countries. As a result, the language regarding rescue scholar activities being considered democracy programs, and thus making available the democracy program notwithstanding authority, was not retained.
  - Environment Programs. The notwithstanding authority for environment programs in section 7060(c) was modified to no longer require special notification before exercising such authority. Instead, the provision requires that use of such authority is subject to the reporting requirements of the Committees on Appropriations. The SOM describes such “reporting requirements” as the submission of a report within 90 days of the close of the fiscal year. Additionally, the Act does not contain the authority to make contributions to multilateral environmental funds and facilities to support adaptation and mitigation programs.

- Food Security and Agricultural Development. Section 7060(d) expands the notwithstanding authority for food security and agricultural development programs to either prevent or address food shortages. In prior years, the notwithstanding authority was limited to “address food shortage.”
  - Modern Slavery. Section 7060(f)(2) is a new provision that provides \$25 million of DA and INCLE for competitively awarded grants in FY 2016 pursuant to the End Modern Slavery Initiative Act, if such bill is enacted into law during FY 2016.
36. Small Grants Program.\* Section 7034(q) makes modifications to the Small Grants Program established in the FY 2015 Act. The revisions include expanding the use of funds allow for contracts, increasing from 12 percent to 20 percent the amount of funds that may be used for administrative purposes, and expanding the definition of “eligible entity” from the FY 2015 Act.

#### **OVERSEAS CONTINGENCY OPERATIONS (OCO)/GLOBAL WAR ON TERROR (GWOT)**

37. OCO Transfer Authorities. Section 8003 providing for transfer authorities between OCO accounts has been modified from previous years. Subsection (a)(1) provides authority for the transfer of funds appropriated in title VIII under Transition Initiatives, Complex Crises Fund, Economic Support Fund, and Assistance for Europe, Eurasia and Central Asia between such headings. Subsection (a)(2) provides authority for the transfer of funds appropriated in title VIII under International Narcotics Control and Law Enforcement, Nonproliferation, Anti-terrorism, Demining and Related Programs, Peacekeeping Operations, and Foreign Military Financing Program between such headings. Subsection (a)(3) includes transfer authorities related to International Disaster Assistance and Migration and Refugee Assistance. Subsection (b) provides authority for the transfer of funds appropriated in title VIII under Foreign Military Financing Program in an amount that shall not exceed \$15,000,000 to the Global Security Contingency Fund for programs in the Europe and Eurasia region. Subsection (c) requires that any transfers pursuant to section 8003(a) may only be exercised to address contingencies; which is modified from fiscal year 2015 providing for transfers only to meet “unanticipated” contingencies. Subsection (d) requires that the transfer authorities provided by subsections (a) and (b) are subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

#### **OTHER SIGNIFICANT ITEMS NOT RETAINED FROM FY 2015 ACT**

- “Crisis Response” authority to use up to \$10 million in HIV/AIDS funding to respond to unanticipated crises in Africa. (FY 2015 SFOAA section 7042(c)).
- Prior notification for reliance on environment programs notwithstanding authority. (FY 2015 SFOAA section 7060(c)).

**SIGNIFICANT PERMANENT PROVISIONS OF LAW CONTAINED IN ACT**

Section 7034(d)(4) Extension of Legal Protection.—

No conviction issued by the Cairo Criminal Court on June 4, 2013, in “Public Prosecution Case No. 1110 for the Year 2012”, against a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States, shall be considered a conviction for the purposes of United States law or for any activity undertaken within the jurisdiction of the United States during fiscal year 2016 and any fiscal year thereafter.

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Sec. 9005	Repeal of Systemic Risk Exemption to Limitations to Access Policy of the International Monetary Fund
Sec. 9006	Annual Report on Lending, Surveillance, or Technical Assistance Policies of the International Monetary Fund
Sec. 9007	Report on Improving United States Participation in the International Monetary Fund

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